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In re Application of
NELSON ⁰⁵²
U.S. Application No. 09/424,502
PCT No.: PCT/GB98/01549
Int. Filing Date: 27 May 1998
Priority Date: 30 May 1997
Attorney Docket No. 4532670/2062
For: METHOD OF CO-CRYSTALLIZING A FOOD
ADDITIVE

DECISION ON PETITION

This is a decision on applicant's "PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNAVOIDABLY UNDER 37 CFR 1.37(a)" filed 19 May 2000.

BACKGROUND

On 27 May 1998, applicant filed international application PCT/GB98/01549 which claimed a priority date of 30 May 1997 and which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 03 December 1998. A Demand was filed with the International Preliminary Examination Authority prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 30 November 1999.

On 17 November 1999, applicant filed a transmittal letter requesting entry into the national stage in the United States, which was accompanied by, inter alia: the basic national fee; a copy of the international application; and amendments to the claims of the international application under PCT Article 19.

On 07 January 2000, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 was omitted. A new oath or declaration in compliance with 37 CFR 1.497 and a surcharge for providing the oath or declaration later than 30 months from the priority date were required. The notification set a ONE (1) MONTH period for response.

On 16 May 2000, applicant filed a petition under 37 CFR 1.137(a); a declaration and power of attorney; and the surcharge for supplying an oath or declaration later than 30 months from the priority date.

DISCUSSION

The period to respond to the Notification of Missing Requirements was due on or before 07 February 2000. However, pursuant to the provisions of 37 CFR 1.136(a), extensions of time are allowable up to 07 July 2000. The executed declaration, surcharge fee required under 37 CFR 1.492(e), and multiple dependant claim fee required in the Notification Requirements were received on 16 May 2000. Pursuant to 37 CFR 1.136(a)(3), the Fee transmittal letter includes authorization to charged the required four month extension. Accordingly, the petition to revive was filed prematurely. In view thereof, the petition to revive is unnecessary and is dismissed as moot. Deposit Account No. 12-2250 will be refunded the \$110 petition fee.

The declaration submitted on 16 May 2000 does not appear to have been properly executed, as required under 37 CFR 1.497(a). Specifically, is not clear whether the signature of the first inventor has signed the declaration, as a date appear in the signature line followed by scribble not resembling a signature.

CONCLUSION

The petition under 37 CFR 1.137(a) is **DISMISSED** as moot.

As authorized in the fee transmittal sheet, the four-month extension of time fee of \$1360 will be charged to Deposit Account No. 12-2250 and the \$110 petition fee will be refunded.

Applicant is given **ONE MONTH** from the mailing date of this decision to file a proper declaration in compliance with 37 CFR 1.497 (a) and (b) executed by all of the named inventors or to confirm that what appears to be scribble is in fact the first inventor's signature. Failure to provide an appropriate response will result in abandonment.

Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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